

accompanying enforcement procedures are consistent with section 209 of the Act.

## VII. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until February 16, 2015. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2014-0798.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" ("CBI"). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 12, 2014.

**Christopher Grundler,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

[FR Doc. 2014-27645 Filed 11-20-14; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9919-56-OAR]

### California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines Regulations; Tier 4 Off-Road Compression-Ignition Regulations; Exhaust Emission Certification Test Fuel for Off-Road Spark-Ignition Engines, Equipment, and Vehicles Regulations; Request for Within-the-Scope and Full Authorization; Opportunity for Public Hearing and Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The California Air Resources Board (CARB) has notified the Environmental Protection Agency (EPA) that it has adopted amendments to its spark-ignited (SI) Small Off-Road Engines (SORE) regulations (2011 SORE amendments), Tier 4 Off-Road Compression-Ignition (CI) regulations (2011 Tier 4 amendments), and Exhaust Emission Certification Test Fuel for Off-Road Spark-Ignition Engines, Equipment, and Vehicles regulations (2011 Certification Test Fuel amendments). By letter dated June 13, 2014, CARB asked that EPA authorize these amendments pursuant to section 209(e) of the Clean Air Act (CAA or Act) 42 U.S.C. 7543(e). CARB seeks confirmation that the amendments are within the scope of prior authorizations issued by EPA, or, in the alternative, that the amendments merit full authorization. This notice announces that EPA has tentatively scheduled a public hearing to consider California's authorization request for the 2011 SORE amendments, 2011 Tier 4 amendments, and 2011 Certification Test Fuel amendments, and that EPA is now accepting written comment on the request.

**DATES:** EPA has tentatively scheduled a public hearing concerning CARB's request on January 14, 2015, at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by December 15, 2014 to express interest in presenting the Agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to Brenton Williams at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5530 at 1200 Pennsylvania Ave. NW., Washington, DC 20460. If EPA does not receive a request for a public hearing,

then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until February 16, 2015.

Any person who wishes to know whether a hearing will be held may call Brenton Williams at (734) 214-4341 on or after December 17, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2014-0535, by one of the following methods:

- Online at <http://www.regulations.gov>

Follow the Online Instructions for Submitting Comments.

- Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- Fax: (202) 566-9744.

- Mail: Air and Radiation Docket,

Docket ID No. EPA-HQ-OAR-2014-0535, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.

- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Online Instructions for Submitting Comments:** Direct your comments to Docket ID No. EPA-HQ-OAR-2014-0535. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA-HQ-OAR-2014-0535. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the <http://www.regulations.gov> Web site, enter, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization **Federal Register** notices. The page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

**FOR FURTHER INFORMATION CONTACT:**  
Brenton Williams, Attorney-Advisor,  
Compliance Division, Office of

Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214-4341. Fax: (734) 214-4053. Email: [williams.brent@epa.gov](mailto:williams.brent@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. California's SORE Regulations**

Small off-road engines and equipment<sup>1</sup> are rated at or below 19 kilowatts (kW) (25 horsepower (hp)). The vast majority of engines covered by the SORE regulations are SI engines that are used to power a broad range of equipment, including lawn mowers, leaf blowers, generators, and small industrial equipment. Exhaust and evaporative emissions from these engines are a significant source of hydrocarbons and oxides of nitrogen, pollutants that contribute to smog problems in California.

CARB promulgated its first SORE regulations in 1992 and amended them in 1993. EPA authorized the regulations, as amended, on July 5, 1995.<sup>2</sup> CARB further amended these regulations in 1994, 1995, and 1996, and EPA confirmed all the amendments to be within the scope of the prior approval on November 9, 2000.<sup>3</sup> CARB again amended the SORE regulations in 1998, this time requesting within-the-scope determination for all but one of the amendments, for which full authorization was requested. EPA issued its within-the-scope determination on November 9, 2000, for these former amendments, and a full authorization on November 10, 2003, for the latter amendment.<sup>4</sup> In 2000 and again in 2004, CARB amended the SORE regulations to more closely align with the federal SORE program. EPA confirmed that the 2000 amendments were within the scope of the previously granted SORE authorization in February, 2010, and also granted a full authorization for the 2004 amendments to standards and test procedures for certain nonroad compression ignition engines.<sup>5</sup> EPA issued a full authorization for CARB's 2004 amendments to the SI SORE regulations on December 11, 2006.<sup>6</sup>

CARB adopted additional SORE amendments on November 21, 2008.<sup>7</sup>

<sup>1</sup> The federal term "nonroad" and the California term "off-road" are used interchangeably.

<sup>2</sup> 60 FR 37440 (July 20, 1995).

<sup>3</sup> 65 FR 69763 (November 20, 2000).

<sup>4</sup> 65 FR 69767 (November 20, 2000); 68 FR 65702 (November 21, 2003).

<sup>5</sup> 75 FR 8056 (February 23, 2010).

<sup>6</sup> 71 FR 75536 (December 15, 2006).

<sup>7</sup> The specific regulatory text for the 2008 amendments is codified at title 13, California Code of Regulations (CCR), sections 2401, 2403, 2404,

and requested EPA authorization review. EPA provided opportunity for comment on that request<sup>8</sup> and is preparing a notice of final decision. The 2008 SORE amendments modified the emission credits program to provide manufacturers with additional flexibility. Additionally, manufacturers were permitted to use a certification fuel with up to ten volume percent ethanol content, provided that the same fuel is used for certification with the EPA.

CARB approved the 2011 SORE amendments at issue in this notice on December 16, 2011, and adopted them on October 25, 2012.<sup>9</sup> The 2011 SORE amendments became operative on January 10, 2013.<sup>10</sup> The 2011 SORE amendments modify California's existing SORE test procedures by aligning California procedures to be consistent with recent amendments by EPA to the federal certification and exhaust emission testing requirements at title 40, Code of Federal Regulations (CFR), Parts 1054 and 1065.<sup>11</sup> Part 1054 contains certification protocols, production-line testing requirements, credit-generation allowances, and other related provisions applicable to federally certified engines. Since CARB had previously promulgated California-specific versions of these provisions for SORE engines, the 2011 SORE amendments adopted Part 1054, but with modifications that substitute California's specific emission standards, production-line testing requirements and credit-allowances for the corresponding federal provisions.<sup>12</sup> Part 1065 specifies the "state-of-the-art" testing equipment, systems, and processes that must be utilized in conducting emissions testing of applicable engines. The 2011 SORE amendments align California test procedures for 2013 and later model year engines with the requirements specified in Part 1065.<sup>13</sup>

By letter dated June 13, 2014, CARB submitted a request to EPA pursuant to section 209(e) of the CAA for authorization of its 2011 SORE amendments. CARB seeks EPA's confirmation that the 2011 SORE amendments fall within the scope of

2405, 2406, 2408, 2408.1 and 2409. California's Office of Administrative Law formally approved the rulemaking on April 5, 2010 and the regulations became effective on May 5, 2010.

<sup>8</sup> See 79 FR 30610 (May 28, 2014).

<sup>9</sup> See EPA-HQ-OAR-2014-0535-0007, "Enclosure 5 CARB Resolution 11-41", and EPA-HQ-OAR-2014-0535-0008, "Enclosure 6 Executive Order R-12-005".

<sup>10</sup> *Id.*

<sup>11</sup> See EPA-HQ-OAR-2014-0535-0001, "2013-13-14 Auth Support Document SORE 2011".

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 11.

EPA's previous authorizations,<sup>14</sup> or, in the alternate, a full authorization for those amendments.

## II. California's Off-Road CI Engine Regulations

Off-road CI engines are used in tractors, excavators, dozers, scrapers, portable generators, transport refrigeration units, irrigation pumps, welders, compressors, scrubbers, and sweepers.<sup>15</sup> In 1992, CARB approved a regulation to control exhaust emissions from heavy-duty off-road CI engines 175 hp and above.<sup>16</sup> CARB requested that EPA grant authorization and it was granted in 1995.<sup>17</sup> In 2000 and in 2004–2005, CARB amended or adopted emission standards and accompanying test procedures that affected three power categories of off road CI engines. The 2000 rulemaking generally harmonized California's emission standards and test procedures to federal standards that EPA promulgated in 1998 for the same nonroad CI engine categories (Tier 1 through Tier 3).<sup>18</sup> The 2004–2005 CARB rulemaking generally harmonized California's Tier 4 standards to the federal Tier 4 standards for these same off-road CI engines that EPA adopted in 2004.<sup>19</sup> In February 2010, EPA confirmed that the 2000 amendments to the smallest category of engines (less than 19kW) were within the scope of the previously granted authorization. EPA further granted full authorizations for the 2004–2005 amendments as they affected new off-road CI engines less than 19kW, and for the 2000 and 2004–2005 amendments as they affected new off-road CI engines for the other two power categories (19kW–130kW and greater than 130kW).<sup>20</sup>

CARB approved the Tier 4 amendments at issue in this notice on December 16, 2011, and adopted them on October 25, 2012.<sup>21</sup> The 2011 Tier 4 amendments became operative on January 10, 2013.<sup>22</sup> The 2011 Tier 4 amendments enhance the harmonization of CARB's exhaust emission requirements for new off-road

CI engines with the corresponding federal emissions requirements for nonroad CI engines set forth in Parts 1039, 1065, and 1068.<sup>23</sup> EPA most recently amended these Parts in 2011.<sup>24</sup> The 2011 Tier 4 amendments correct clerical errors, standardize measurement specifications, calibrations, and instrumentation, remove unnecessarily burdensome reporting requirements, and provide additional compliance flexibility options.<sup>25</sup> The 2011 Tier 4 amendments also incorporate EPA's anti-stockpiling provisions, which help ensure the realization of projected emission benefits, and also establish a new interim Tier 4 combined hydrocarbon plus oxides of nitrogen emission standard that has the potential to provide additional emission benefits.<sup>26</sup>

By letter dated June 13, 2014, CARB submitted a request to EPA pursuant to section 209(e) of the CAA for authorization of its 2011 Tier 4 amendments. CARB seeks EPA's confirmation that the 2011 Tier 4 amendments fall within the scope of EPA's previous authorizations, or, in the alternative, a full authorization for those amendments.

## III. California's Exhaust Emission Certification Test Fuel for Off-Road Spark-Ignition Engines, Equipment, and Vehicles Regulations

Prior to the 2011 Certification Test Fuel amendments, California's SORE and Large Spark Ignition (LSI) test procedures allowed gasoline-fueled, spark-ignition engines to be tested for compliance with certification exhaust standards using either Indolene or Phase 2 California Reformulated Gasoline (CaRFG2) as an option to federally specified test fuels. Recreational marine engines were permitted to use CaRFG2, federal Indolene, or the fuel specified in Table 3 of Appendix A to 40 CFR Part 91, Subpart D. Off Highway Recreational Vehicles (OHRV) that were categorized as off-road motorcycles were required to certify using Indolene. OHRVs that were categorized as go-karts and specialty vehicles were allowed to certify using either Indolene or CaRFG2, and OHRVs that were categorized as all-terrain vehicles (ATVs) were generally required to use Indolene, but were allowed to

certify using CaRFG2 in some circumstances.<sup>27</sup>

The initial SORE regulation and the 1993 amendments to the SORE regulation allowed manufacturers to utilize either Indolene or California Phase 1 fuel as test fuel for certification.<sup>28</sup> EPA granted California a full authorization for the initial SORE regulation and the 1993 amendments.<sup>29</sup> In 1994 CARB amended the SORE regulation to provide manufacturers the option to certify SORE engines using CaRFG2 that was consistent with the certification test fuel specified for on-road motor vehicles. EPA confirmed that the 1994 amendment was within the scope of the previously issued authorization for the SORE regulation and additionally confirmed that the 1995 and 1996 amendments to the SORE regulation fell within the scope of the initially granted SORE authorization.<sup>30</sup> Additional SORE amendments in 1998 were confirmed as within the scope of previous authorizations. EPA issued a full authorization for CARB's 2004 SORE amendments.<sup>31</sup> CARB has subsequently requested within-the-scope confirmation from EPA for a provision of the 2008 SORE amendment package that allows use of 10-percent ethanol-gasoline blend (E10) for SORE certification fuel. That request is currently pending with the EPA and a notice of decision is under review.<sup>32</sup>

The initial LSI regulation specified that the certified gasoline test fuels for LSI engines were either Indolene or CaRFG2. EPA granted California a new authorization for the initial LSI regulation on May 15, 2006.<sup>33</sup> CARB amended the LSI regulation in 2006 and EPA granted CARB a full authorization for those amendments in 2012.<sup>34</sup>

The initial CARB Marine SI Engine regulation applicable to 2001 and later model year outboard SI marine engines and personal watercraft engines established test procedures that were virtually identical to those in the federal SI Marine Engine regulations. In 2002 CARB adopted regulations establishing exhaust emission standards and related certification and test procedures for 2003 and later model year SI inboard

<sup>14</sup> EPA's most recent authorizations for CARB's SORE regulations can be found at 71 FR 75536 (December 15, 2006) and 75 FR 8056 (February 23, 2010).

<sup>15</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 4.

<sup>16</sup> *Id.*

<sup>17</sup> 60 FR 37440 (July 5, 1995).

<sup>18</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 5.

<sup>19</sup> *Id.*

<sup>20</sup> 75 FR 8056 (February 23, 2010).

<sup>21</sup> See EPA-HQ-OAR-2014-0535-0007, "Enclosure 5 CARB Resolution 11–41", and EPA-HQ-OAR-2014-0535-0008, "Enclosure 6 Executive Order R–12–005".

<sup>22</sup> *Id.*

<sup>23</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 12.

<sup>24</sup> 76 FR 37977 (June 28, 2011).

<sup>25</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 13–18.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 9.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> 60 FR 37440 (July 20, 1995).

<sup>30</sup> 65 FR 69763 (Nov. 20, 2000).

<sup>31</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 8.

<sup>32</sup> The 2008 SORE amendments initial notice for public hearing and comment can be found at 79 FR 30610 (May 28, 2014).

<sup>33</sup> 71 FR 29623 (May 23, 2006).

<sup>34</sup> 77 FR 20388 (April 4, 2012).

and sterndrive marine engines that specified the same certification test fuels as those applicable to outboard engines and personal water craft.<sup>35</sup> EPA granted California an authorization for these regulations in 2007.<sup>36</sup> CARB amended the Marine SI Engine regulations in 2006 and EPA granted an authorization for those amendments in 2011.<sup>37</sup>

EPA granted California a new authorization for the initial OHRV regulation in 1996,<sup>38</sup> and confirmed that 1996 amendments to the OHRV regulation were within the scope of the initial authorization in 2000.<sup>39</sup> In 2014, EPA granted new authorizations, confirmed that amendments were within the scope of the previously issued authorizations, or confirmed that no authorization action was required for CARB's 1999, 2003, and 2006 amendments to the OHRV regulation.<sup>40</sup>

The 2011 Certification Test Fuel amendments modified the certification test fuel requirements for off-road spark ignition, gasoline-fueled engines to allow the use of 10-percent ethanol-blend of gasoline (E10) as a certification fuel. The use of the E10 certification fuel is allowed as an option for certification exhaust emission testing of new gasoline-fueled SORE, LSI, Recreational Marine, and OHRV off-road categories from the 2013 through 2019 model years, and is mandatory for certification exhaust emission testing of these categories beginning with the 2020 model year.<sup>41</sup>

By letter dated June 13, 2014, CARB submitted a request to EPA pursuant to section 209(e) of the CAA for authorization of its 2011 Certification Test Fuel amendments. CARB seeks EPA's confirmation that the 2011 Certification Test Fuel amendments fall within the scope of EPA's previous authorizations, or, in the alternate, a full authorization for those amendments.

#### IV. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other

requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].<sup>42</sup> In addition, other states with air quality attainment plans may adopt and enforce such regulations if the standards and the implementation and enforcement procedures are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.<sup>43</sup> EPA revised these regulations in 1997.<sup>44</sup> As stated in the

<sup>42</sup> EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria. In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination. See *Motor and Equipment Manufacturers Ass'n v. Nichols*, 142 F.3d 449, 462–63, 466–67 (D.C. Cir.1998), *Motor and Equipment Manufacturers Ass'n v. EPA*, 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979). See also 78 FR 58090, 58120 (September 20, 2013).

<sup>43</sup> 59 FR 36969 (July 20, 1994).

<sup>44</sup> 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).<sup>45</sup>

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with [section 202(a)]" of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.<sup>46</sup>

If California amends regulations that EPA has already authorized, California can seek EPA confirmation that the amendments are within the scope of the previous authorization. A within-the-scope confirmation, without a full authorization review, is permissible if three conditions are met.<sup>47</sup> First, the amended regulations must not undermine California's determination

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request to authorize California to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

<sup>45</sup> 59 FR 36969 (July 20, 1994).

<sup>46</sup> *Id.* See also 78 FR 58090, 58092 (September 20, 2013).

<sup>47</sup> See 78 FR 38970, 38972 (June 28, 2013).

<sup>35</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 9.

<sup>36</sup> 72 FR 14546 (March 28, 2007).

<sup>37</sup> 76 FR 24872 (May 3, 2011).

<sup>38</sup> 61 FR 69093 (Dec. 31, 1996).

<sup>39</sup> 65 FR 69763 (Nov. 20, 2000).

<sup>40</sup> 79 FR 6584 (Feb. 14, 2014).

<sup>41</sup> See EPA-HQ-OAR-2014-0535-0001, "2013–13–14 Auth Support Document SORE 2011" at 18.

that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any "new issues" affecting EPA's prior authorizations.

#### V. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and is requesting written comment on issues relevant to a within-the-scope analysis. Specifically, we request comment on whether California's 2011 SORE amendments, 2011 Tier 4 amendments, and 2011 Certification Test Fuel amendments: (1) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards; (2) affect the consistency of California's requirements with section 209 of the Act; or (3) raise any other new issues affecting EPA's previous waiver or authorization determinations.

Should any party believe that the amendments are not within the scope of the previous authorizations, EPA also requests comment on whether the 2011 SORE amendments, 2011 Tier 4 amendments, and 2011 Certification Test Fuel amendments meet the criteria for a full authorization. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious; (b) whether California needs such standards to meet compelling and extraordinary conditions; and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

#### VI. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until February 16, 2015. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2014-0535.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 12, 2014.

**Christopher Grundler,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

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**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[Petition No. IX-2013-1; FRL-9919-46-Region 9]

**Petition on Clean Air Act Title V Permit; Gateway Generating Station; Antioch, CA**

**AGENCY:** United States Environmental Protection Agency.

**ACTION:** Notice of final action.

**SUMMARY:** Pursuant to Clean Air Act (CAA) section 505(b) and 40 CFR 70.8(d), the United States Environmental Protection Agency (EPA) Administrator signed an Order, dated October 15, 2014, denying a petition to object to a CAA title V operating permit proposed by the Bay Area Air Quality Management District (BAAQMD) for the Gateway Generating Station, LLC facility in Antioch, California (Gateway). The Order constitutes a final action on the petition submitted by the Wild Equity Institute (Petitioner) dated September 3, 2013 requesting that the EPA Administrator object to the proposed title V permit for Gateway. Pursuant to section 505(b) of the CAA, a petitioner may seek judicial review in the United States Court of Appeals for

the appropriate circuit of those portions of the petition that EPA denied. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the CAA.

**DATES:** The EPA Administrator signed an Order, dated October 15, 2014, denying a petition to object to the CAA title V operating permit proposed by the BAAQMD for Gateway. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of November 21, 2014.

**ADDRESSES:** Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, California 94105. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, petition, and other supporting information. You may view the hard copies Monday through Friday, from 9 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 48 hours before the visiting day. The final Order is also available electronically at the following Web site: <http://www.epa.gov/region07/air/title5/petitiondb/petitiondb.htm>.

**FOR FURTHER INFORMATION CONTACT:** Gerardo Rios, Air Permits Office, EPA Region 9, at (415) 972-3974 or [rios.gerardo@epa.gov](mailto:rios.gerardo@epa.gov).

**SUPPLEMENTARY INFORMATION:** The CAA affords the EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661-7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Petitioner submitted a petition regarding Gateway dated September 3,